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No. 82-799

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS,
PETITIONER,

v.

FEDERAL LABOR RELATIONS AUTHORITY, ET AL.,
RESPONDENTS

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE OF NATIONAL FEDERATION OF FEDERAL EMPLOYEES IN SUPPORT OF RESPONDENTS

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BRIEF AMICUS CURIAE OF NATIONAL FEDERATION OF FEDERAL EMPLOYEES IN SUPPORT OF RESPONDENTS

INTEREST OF THE AMICUS CURIAE

The National Federation of Federal Employees (NFFE) is a labor organization as defined in 5 U.S.C. §7103(a)(4) which represents approximately 150,000 federal employees throughout the United States and abroad. NFFE is presently comprised of approximately 500 affiliated locals. Collective bargaining rights are accorded to

NFFE local unions, or in some instances to a council made up of a number of local unions, in accordance with 5 U.S.C. §7111.

NFFE is a party to a case involving the same issue as that presented here. The case is pending in the United States Court of Appeals for the District of Columbia Circuit, United States Environmental Protection Agency v. Federal Labor Relations Authority, Civ. No. 82-2396 (D.C. Cir., filed Nov. 22, 1982), and it has been stayed pending this Court's disposition of the case at bar.

We have a substantial interest in the resolution of the question presented for review. The entitlement of union negotiators to receive payment for travel and per diem expenses incurred while on official time in the negotiation of a collective bargaining agreement is of fundamental importance to the federal

labor relations program. A decision by this Court to overturn the court below would represent a severe blow to our ability to carry out our responsibilities on behalf of the employees in NFFE bargaining units. Accordingly, NFFE supports the position of respondents in this case.

SUMMARY OF ARGUMENT

In enacting the Civil Service Reform Act of 1978, Congress established the Federal Labor Relations Authority as the administrative agency charged with the interpretation of the statute and with the adjudication of disputes arising under it. Because interpretation of the statute is a primary responsibility of the Authority, and because the Authority has expertise in the federal labor relations program enabling it to render such interpretations, the Authority's Interpretation in this case is entitled to deference.

Legislative history of the official time provision of the statute shows that Congress knew of the restrictive policies in effect under the Executive Order labor relations program, and that it explicitly rejected those policies and struck a new balance between labor and management,

designed to put the unions on a more equal footing with management in collective bargaining. The Authority's Interpretation promotes this Congressional determination.

The FLRA has not improperly infringed upon a matter consigned to the General Services Administration. The FLRA's determination is based upon its reading of 5 U.S.C. §7131, a part of its enabling statute, and is not dependent upon analysis of 5 U.S.C. §5702. Moreover, GSA is an employing agency in the federal labor relations program and therefore is not in a position to make a neutral determination on the entitlement of union negotiators to travel and per diem payments. Other provisions of the labor relations statute suggest that Congress envisioned occasional need for the Authority to rule on matters which concerned issuances of other agencies, and that it empowered the FLRA,

as the neutral agency in the federal program, to make those rulings.

The Authority's Interpretation effectuates other purposes of the Federal Service Labor-Management Relations Statute. Specifically, it provides some incentive for management to come to the bargaining table with a sincere interest in reaching agreement, an incentive which was sorely lacking prior to the enactment of the Civil Service Reform Act. The nature of collective bargaining, as well as certain statutory provisions, already place an unequal pressure on unions to reach agreement in negotiations. Allocation of responsibility for travel and per diem payments to agency management helps to equalize the burdens on the parties, consistent with Congressional intent.

Finally, the Authority's policy favoring consolidation of smaller bargaining units into larger units would be

frustrated by a ruling overturning the Authority's Interpretation, since federal unions would lack the funds to participate in consolidated bargaining. This lack of funds would also place unions in a position where they could be unable to meet their statutory duty of fair representation owed to bargaining unit employees. Such a result would frustrate the purposes of the Civil Service Reform Act.

ARGUMENT

I. INTERPRETATIONS OF THE FEDERAL LABOR RELATIONS AUTHORITY ARE ENTITLED TO DEFERENCE FROM THE COURTS.

A. It is the Proper Role of the Federal Labor Relations Authority to Resolve Major Policy Issues Pertaining to Federal Labor Relations.

The statutory provision at issue is this case, 5 U.S.C. §7131, is only one part of an extensive statutory program for federal labor relations. Title VII of the Act governs labor-management relations and collective bargaining for the majority of federal agencies. Executive Order No. 10988, 3 C.F.R. 521 (1959-1963 Compilation), and subsequent orders which previously governed the federal sector labor

relations program, were effectively repealed. 1/ The Act comprehensively reorganized the structure of federal labor-management relations. Congress established the new system to protect the right of employees to bargain collectively and to encourage the development of practices which would lead to greater governmental efficiency. See 5 U.S.C. §7101. The Federal Labor Relations Authority (FLRA) was created by the legislation and replaced its predecessor the Federal Labor Relations Council (FLRC). The FLRC had been composed of three ex-officio

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1/ The original Executive Order labor relations program was revised and continued by Executive Order No. 11491, 3 C.F.R. 861 (1966 - 1970 Compilation) as amended by Executive Orders Nos. 11616, 11636 and 11838, 3 C.F.R. 605, 634 (1971 - 1975 Compilation) and 3 C.P.R. 957 (1971 - 1975 Compilation).

members, the Director of the Office of Management and Budget, the Secretary of Labor, and the Chairman of the Civil Service Commission. Due in part to criticism of the management composition of the FLRC, Congress created the FLRA in its present neutral form. 2/

The FLRA was established to develop and administer policies under the Act and in general to perform in the federal sector a function akin to that of the National Labor Relations Board, which oversees

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2/ Message from the President Transmitting Proposal to Reform the Federal Personnel Management System Through Reorganization Plan No. 2 of 1978, H.R. Doc. No. 95-341, 95th Cong., 2d Sess., 2 (1978), reprinted in Subcomm. on Postal Personnel and Modernization of the Comm. on Post Office and Civil Service, 96th Cong. 1st Sess., Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978, at 630, 632 (Comm. Print No. 96-7) [hereinafter cited as "Legis. Hist."]; H.R. Rep. No. 95-1396, 95th Cong., 2d Sess., 3, 7 (1978), Legis. Hist. at 659, 661, 665.

labor-management relations in the private sector. 3/ Congress also empowered the FLRA to take actions necessary and appropriate to effectively administer its responsibilities. 5 U.S.C. (Supp. V.) §7105.

In furtherance of its responsibilities under 5 U.S.C. §7105 (a)(1) to "provide leadership in establishing policies and guidance relating to matters under this chapter [and to] be responsible for carrying out the purpose of this chapter", the FLRA has issued several "Interpretation and Guidance" determinations. At issue here is the FLRA determination on the question whether employees representing

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3/ See 29 U.S.C. §151 et seq. (1976). This analogy between the FLRA and the NLRB has been explicitly accepted by the courts. See, e.g., Turgeon v. FLRA, 677 F. 2d. 937, 939 (D.C. Cir. 1982)(per curiam); Department of Defense v. FLRA, 659 F. 2d 1140, note 8 at 1144 (D.C. Cir. 1981), cert. denied sub nom. AFGE v. FLRA, 455 U.S. 945 (1982).

a union and engaged in negotiations on official time are entitled to travel and per diem expenses from their agencies. NFFE submitted comments supporting the conclusion that such an entitlement exists. The FLRA considered all comments, reviewed the Act's legislative history, and issued its Interpretation and Guidance at 2 FLRA 265 (1979). The U.S. Court of Appeals for the Ninth Circuit reviewed that decision and properly sustained it.

Judicial review of Authority orders is governed by 5 U.S.C. §706. The FLRA's ruling is to be set aside only if "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law[.]" 5 U.S.C. §706(2)(A). See Department of Defense v. FLRA, 659 F.2d 1140 (D.C. Cir. 1981). The Ninth Circuit correctly determined that the Authority's decision is reasoned and justifiable.

The FLRA's decision is based upon its analysis of 5 U.S.C. (Supp. V) §7131(a) which authorizes official time for union negotiators engaged in collective bargaining. In its analysis, the FLRA examined applicable legislative history in order to discern Congressional intent on this point. Official time practices under the Executive Order program had been restrictive. While agency managers received official time for all hours spent in negotiations, their union counterparts received at best "half time". This meant that no more than one half of the time spent by employees on behalf of the union could be paid by the agency; for the rest, employees were required to use their annual leave (vacation) time, or go without compensation for half their hours. Alternatively, union negotiators could be granted a maximum of 40 hours official

time. Executive Order 11491, 3 C.F.R. 861 (1966-1970 compilation), Section 20. Since agency managers could spend as much time at the table as they pleased, the restrictions on union official time prevented the union from entering into negotiations with management as equals.

The official time restrictions were significantly altered by the enactment of Section 7131. Under the Act, Section 7131(a) mandates that an agency grant official time to an employee representing a labor organization during collective bargaining negotiations when an employee would otherwise be in a duty status.

Based upon its review of the language of the Act and legislative history, the FLRA concluded that Congress explicitly intended to make a significant departure from the Executive Order program. The Authority stated that the official time

provision of the statute was enacted in order to allow "effective union representation comparable to the representation of management." Interpretation, 2 FLRA 265, 268 (1979).

The enactment of Section 7131, making official time automatic, was a direct reversal of Section 20 of the Executive Order, which severely limited official time. Relying upon the statute's explicit endorsement of collective bargaining, and recognizing that Section 7131 represented a complete reversal of prior policy, the Authority reasonably concluded that employees on official time were entitled to the benefits they would normally receive while on duty, including travel and per diem expenses. Such expenses are paid to government employees when "engaged on official business for the Government." 5 U.S.C. §5701 et seq. Accordingly, the Authority concluded that union negotiators

on official time are engaged in official business and entitled to travel and per diem expenses. In doing so, the Authority was construing the legislative intent of Section 7131, not the intent of Section 5702. Section 5702 is simply the general authorization for disbursement of travel expenses; it is the interpretation of Section 7131 controls the entitlement of union negotiators to such expenses.

Interpretation of the Federal Service Labor-Management Relations Statute, 5 U.S.C. §§7101 et seq., is the Authority's primary responsibility. 5 U.S.C. §7105. In this area the Authority is clearly entitled to the deference accorded to an administrative agency with expertise in matters arising under its enabling statute. Department of Defense v. FLRA, 659 F.2d 1140 (D.C. Cir. 1981).

B. The Authority's Interpretation Does Not Infringe on a Matter Consigned By Statute to the General Services Administration.

The FLRA's Interpretation does not infringe upon the authority of the General Services Administation to issue regulations and to administer the statutory provisions for travel and per diem expenses under 5 U.S.C. §5702. As noted above, the FLRA's Interpretation is based upon an analysis of Section 7131 on official time and the necessary implications of that section, and not on the meaning of Section 5702. Nonetheless, the Government argues that the Authority's Interpretation is not entitled to any deference because it makes reference to Section 5702, a provision which is not part of the Authority's enabling statute. Such a reading of the law would unduly restrict the Authority's ability to carry out its responsibilities

in the Administration of the federal labor relations program.

The General Services Administration is not in a position to make a determination regarding the entitlement of union negotiators to travel and per diem expenses while on official time under Section 7131. GSA is not a neutral agency in the labor relations program. On the contrary, it is an employing agency under the provisons of 5 U.S.C. §7103 (a)(3) of the Federal Service Labor-Management Relations Statute. As such, it engages in collective bargaining negotiations with labor organizations certified to represent GSA employees under that Statute. As an employing agency, GSA has an interest in holding down negotiating costs, including travel and per diem expenses. Inevitably this fact would color GSA's judgment on whether the law authorized expenses for union negotiators. GSA thus would have an

inherent conflict of interest in the consideration of this issue.

Congress created the FLRA as a neutral body to resolve issues between labor and management. The authority granted to the FLRA by statute indicates that Congress intended for the FLRA to resolve issues which might involve the interpretation of issuances by other agencies. For example, the Authority is charged with ruling on questions of negotiability of union bargaining proposals. 5 U.S.C. §7105(a)(2)(E). Part of the process of deciding whether a matter is negotiable involves a determination whether the proposal is covered by a Government-wide rule or regulation, in which case it would not be negotiable. 5 U.S.C. §7117 (a)(1). Of necessity, this means the FLRA must interpret the meaning of any Government-wide rule or regulation asserted by management to bar negotiations. In doing

so, the FLRA must review issuances of other agencies. Congress clearly accorded the FLRA the right to make these determinations.

Congressional recognition that the FLRA's role in reviewing Government-wide regulations would entail interpretation of those regulations is supported by the statute and its legislative history. The statute explicitly allows the Authority to request, at its option, advisory opinions from the Director of the Office of Personnel Management (OPM) on regulations or other policy directives promulgated by that Office. 5 U.S.C. §7105(i). In the Senate version of Title VII which was reported to the Conference Committee, the FLRA was to be granted the power to request advisory opinions from the Director of OPM, and the Director was granted an automatic right to intervene in any FLRA proceeding. S. 2640, §7204(h), in

Legislative History at 569. The intervention provision was deleted by the Conference Committee and does not appear in the statute as enacted. Thus the FLRA was clearly given the primary role, consistent with Congress' determination to create a neutral body to make determinations on federal labor relations policy matters.

Deletion of the Senate provision shows that Congress knew that the FLRA would need to make interpretations of rules sponsored by other agencies, and intended that the FLRA, rather than another agency, undertake this task. The Authority is expected to use its special understanding of the federal personnel system to accomplish its statutory mandate.

The Authority has been charged with the obligation to provide leadership in labor relations matters. 5 U.S.C. §7105(a). Its role is that of an arbiter

between unions and employing agencies. As a neutral body, the FLRA does not have an interest in the question of whether federal employees are entitled to travel and per diem expenses in accordance with 5 U.S.C. §5702 when bargaining on official time under 5 U.S.C. §7131. It is consistent with the explicit authority delegated to the FLRA, as well as with the statutory purpose underlying Title VII, for the FLRA to make the determination whether an employee granted official time to engage in collective bargaining is also entitled to receive travel and per diem payments from the employing agency.

Even though the FLRA's power to rule on the scope of the duty to bargain allows it to strike compromises which may force one agency into potential conflict with another agency, these judgments have been reserved to the Authority by statute. See Library of Congress v. FLRA, 699 F.2d

1280 (D.C. Cir. 1983). A finding that the FLRA lacks this power would undermine the careful balance that Congress struck when it created the FLRA. Such a decision would encourage a host of agencies, such as the Office of Personnel Management, the Office of Management and Budget, the Federal Emergency Management Agency, the Department of Labor, and others responsible for issuance of Government-wide rules or regulations, to challenge the FLRA's decisions on labor-management areas which impinge on their own regulations as an impermissible infringement of their domain. Such a result would directly conflict with the Authority's role as created by Congress.

II. THE INTERPRETATION OF THE FEDERAL LABOR RELATIONS AUTHORITY PROMOTES EFFECTIVE COLLECTIVE BARGAINING.

A. The Authority's Interpretation Effectuates the Purposes of the Federal Service Labor-Management Relations Act.

Congress has determined that the statutory protection of the right of federal employees to bargain collectively safeguards the public interest and contributes to the effective conduct of public business. 5 U.S.C.§7101(a).

The collective bargaining agreement is the keystone of any labor-management relationship. It defines the rights and obligations of the parties to the agreement and sets forth the benefits and protections applicable to the employees in that bargaining unit. Negotiation of the collective bargaining agreement is of utmost importance to the union.

If the federal labor relations program is to function as Congress intended,

there must be an incentive for both labor and management to reach agreement on a contract. In the private sector the primary incentive for management to negotiate in good faith with the union is the threat of a union strike or work slowdown. Such actions are prohibited under the Civil Service Reform Act. 5 U.S.C. §7103(a)(4)(D); 7116(b)(7). No comparable pressures exist in the federal sector, creating an inherent imbalance. Congress recognized this inequity when it adopted Section 7131(a), granting the union's negotiators the same amount of official time as management's negotiators. A narrow interpretation of Section 7131, granting the union only the equivalent number of hours of time as management but denying employees representing the union the travel and per diem payments accorded to management representatives, would leave

the situation in acute imbalance. The union would be under pressure to conclude negotiations, in order to minimize unreimbursed travel and per diem expenses. Management negotiators could easily take advantage of this by stalling negotiations.

The Government argues that it would be unduly onerous to require the agency to shoulder the expenses of both the agency's and the employees' negotiators, and that such a rule would undercut any incentive for the union's negotiators to reach agreement. In fact, the Government simply wishes to preserve the management advantage which persisted throughout the Executive Order labor relations program. It is an argument the Government lost when the Congress repudiated the official time practices of the Executive Order program and decided to put the parties on an equal

footing. 4/

Certain pressures are in place to encourage both parties to reach agreement. In addition to the mutual requirement to negotiate in good faith, 5 U.S.C. §7117, the law also defines it as an unfair labor practice for either party to fail or refuse to negotiate in good faith. 5 U.S.C. §7116(a)(5), (b)(5).

There is, however, substantially greater pressure on a union to conclude a collective bargaining agreement than there

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4/ The Government's argument that agencies would be unable to control or monitor union expenses, or that it would be improper for them to do so, is misplaced. The duty to bargain in good faith pursuant to 5 U.S.C. §7117 extends to the negotiation of so-called "groundrules" for negotiations. Groundrules cover such matter as the location of negotiation sessions, their length and frequency, and necessary travel arrangements. See, e.g., Dept. of the Army, Army Field Artillery Center, Fort Sill, OK and Local 273, NFFE 69 FSIP 75 (Feb. 20, 1980); Oklahoma Air National Guard and Local 1694, NFFE, 80 FSIP 43 (Oct. 8, 1980). Procedures to monitor or control union expenses can be negotiated.

is on agency management. This pressure comes from at least four sources. First, it is the union which seeks to negotiate protections and benefits for unit employees, while management seeks to preserve its ability to act without the need to abide by procedural safeguards or other negotiated protections. Obviously, no benefits or protections sought by the union will go into effect until the contract is signed and approved in accordance with 5 U.S.C. §7114(c). This simple fact is the primary incentive for the union to reach agreement on a collective bargaining contract.

Second, once a union is certified as the collective bargaining representative of a unit of employees, the statutory interest in promoting stability of labor relationships protects the incumbent union from challenge by a rival organization for only a limited amount of time. In the

case of a newly certified union, the so-called "certification bar" will last for only one year. 5 U.S.C. §7117(f)(4). If the union has not concluded an agreement with agency management by that time, it is vulnerable to challenge by another organization which would seek to displace it, as well as to a challenge by agency management itself asserting that the union no longer represents a majority of eligible employees in the unit.

Third, the union has a statutory duty to represent all employees in the bargaining unit fairly. 5 U.S.C. §7114. Failure to adhere to its responsibility to provide fair representation is an unfair labor practice under Section 7116(b). This fact adds additional pressure on the union which is not present for management.

The fourth unique pressure on the union derives from the Act's prohibition

of an "agency shop". Under the federal labor relations program, no employee may be required to join a union or pay dues, even though the union has the obligation to fairly represent all employees in the bargaining unit. 5 U.S.C. §7102. The legislative history of the Act makes it clear that Congress did not intend to authorize agency shop arrangements, and the Federal Labor Relations Authority has so concluded. Conference Report, H.R. Rep. No. 95-1717, 95th Cong., 2d Sess. 159 (1978), reprinted in Legis. Hist. 827; Service Employees International Union, AFL-CIO, Local 556 and Department of the Army Support Command, 1 FLRA 563 (1979). As a result, the union must work hard to "sell" the benefits of union membership to employees in the bargaining unit, since the union's funds come only from the membership dues of those who choose to join it. The union has no product to sell if it is unable to conclude a collective

bargaining agreement providing benefits and protections for its members. New members cannot be persuaded to join, and current members become disaffected as time wears on without a collective bargaining agreement. Accordingly, the pressure to reach a final agreement is considerable.

Agency management, on the other hand, is in a much stronger position if the union does not have a contract. Without a contract, the union's position as exclusive bargaining agent becomes subject to challenge; the employer can continue to act without regard to any negotiated protections for employees; employees may be expected to become disillusioned with union representation and to withdraw support; and the agency may be able to create a situation where it will not have to deal with the union at all. Federal agencies very much want to have such an advantage. Yet Congress enunciated its intent very

clearly, and the Authority properly relied upon that intent:

> Title VII imposes heavy responsibilities on labor organizations and on agency management. These organizations should be allowed official time to carry out their statutory representational activities just as management uses official time to carry out its responsibilities. FLRA Interpretation and Guidance, 2 FLRA 265 (1979), citing 124 Cong. Rec. H9638 (daily ed. Sep. 13, 1978), emphasis in FLRA Interpretation.

The Authority's Interpretation requiring the agencies to pay travel and per diem expenses for union negotiators on official time pursuant to 5 U.S.C. §7131 helps to effectuate the intent of Congress in enacting that provision: to place union and management on a more equal footing at the bargaining table. The union has many incentives to reach agreement on a collective bargaining contract; without a requirement for the agency to pay expenses, there are virtually no effective pressures on the agency's negotiators. Requiring agencies to pay travel and per

diem expenses for both management and union negotiators will encourage agencies who are concerned about the costs to reach agreement. Congress plainly intended to create some incentives to encourage agencies to reach agreement and to relieve unions of costs which they shouldered under Executive Order 11491. Congress sought to create a more balanced system. The Authority's interpretation comports with the purposes of the Act.

B. FLRA Policy in Other Areas Would Be Undermined by a Reversal of the FLRA Interpretation.

The Federal Labor Relations Authority has adopted a policy of facilitating the consolidation of units. Pursuant to 5 U.S.C. §7112(d), the Authority may consolidate two or more existing bargaining units within a particular agency into a single larger bargaining unit. Such consolidation can facilitate collective dealings and provide more efficient use of the parties' resources by eliminating the need to negotiate a proliferation of separate collective bargaining agreements at the local level. Once a consolidated unit is certified, it replaces the smaller pre-existing units as the exclusive representative of all the employees included in those units. As a result, a single master agreement is negotiated to cover all employees within the consolidated unit.

The Authority's policy favoring unit consolidations was first expressed in Veterans Administration, Washington, D.C. and American Federation of Government Employees, AFL-CIO, 1 FLRA 458 (1979), a case in which the Authority approved the consolidation of 236 units within the Veterans Administration which were represented by constituent locals of the union. In approving the consolidation, the Authority recited the history of the policy as it had developed under the Executive Order.

> In 1975 Executive Order 11491 was amended by Executive Order 11838 to establish a policy which would facilitate the consolidation of existing exclusive bargaining units. In its Report and Recommendations which accompanied the issuance of Executive Order 11838, the Federal

> Labor Relations Council emphasized that "the creation of more comprehensive units is a necessary evolutionary step in the development of a program which meets the needs of the parties in the Federal labor-management relations program and best serves the public interest." The Report further stated that a "consolidated unit . . . must still conform to the appropriate unit criteria contained in the Order" and that "[i]n making his determination on the appropriateness of [a] proposed consolidated unit, the Assistant Secretary should be mindful of the policy of facilitating the consolidation of existing bargaining units." [footnote omitted] 1 FLRA 458, 462.

The Authority has continued this policy in subsequent cases under Title VII. See Army and Air Force Exchange Service, Dallas and American Federation of Government Employees, AFL-CIO, 5 FLRA No. 90 (May 22, 1981).

The policy favoring unit consolidation would be undermined by a decision denying travel and per diem payments to union negotiators. When multiple com-

ponents of a large bargaining unit are scattered around the country, employees representing the union in collective bargaining necessarily must travel to the negotiation site. Travel and per diem expenses will be incurred. If the agencies are relieved of the obligation to pay these costs, the union will be unable to send representatives to participate in collective bargaining.

Reducing the number of agreements which must be negotiated reduces the amount of hours which agency representatives spend in negotiations, thus promoting government efficiency. This savings must be balanced against the cost of travel and per diem payments.

The differing practice in the private sector is not relevant to the federal program, for the relationship of the parties in the private sector is entirely

different. As noted supra at 30, federal unions may not negotiate an agency shop provision. Unions in the private sector are in a far better position to underwrite their own negotiation expenses since they have a source of revenues, forbidden to federal unions, which can substantially defray those costs. Congress struck a different balance in the federal program. Consequently, a reversal of the Authority's interpretation would have an adverse impact on other policy areas within the FLRA's province.

C. Travel and Per Diem Payments are Necessary to Enable the Union to Meet its Duty of Fair Representation.

The union has an obligation under 5 U.S.C. §7114 to fairly represent all employees in the bargaining unit. That duty encompasses the duty to take into account the interests of all segments of the bargaining unit in the negotiation of a collective bargaining agreement. Humphrey v. Moore, 375 U.S. 335 (1964). The union's duty of fair representation has been explicitly recognized in the federal labor relations program and has been found to be enforceable in court. Karahalios v. Defense Language Institute, 534 F.Supp. 1202 (N.D. Calif. 1982).

If federal unions are denied travel and per diem payments for negotiations,

they will be placed in a position where they will be unable to meet their obligation to fairly represent the interests of the members of their bargaining units. This situation will result from the inability to pay for the expenses that would be incurred if they sought to carry out their responsibilities in good faith. Since federal unions cannot seek dues allotments from all those whose interests are represented, their sources of funds are severely limited. Congress intended to preclude agency shop arrangements, but Congress also intended to establish a program which more nearly equalizes the positions of union and management and which protects the right of employees to bargain collectively. The FLRA correctly interpreted the balance of interests which Congress sought to establish and gave effect to that balance in its Interpretation.

CONCLUSION

The decision of the Court of Appeals for the Ninth Circuit, affirming the Authority's rulings on payment of travel and per diem expenses, should be affirmed. The Authority's determination is reasoned and justifiable. It implements Congressional intent, and it fosters the balance between labor and management that was established by Congress.

Respectfully submitted,

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